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No. 93-2042

In the Supreme Court of the United States
October Term, 1993

STATE OF MICHIGAN, et al,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF OF PETITIONERS

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QUESTION PRESENTED

Where The United States And The State Stipulate That The State Is In "Substantial Compliance" With A Prison Reform Consent Decree Entered As The Judgment Of The Court Pursuant To The Civil Rights Of Institutionalized Persons Act (CRIPA) And Has "Achieved The Goal Of The Decree By Assuring At Least Constitutional Conditions," After Eight Years Of Monitoring, Did The District Court Exceed Its Authority By Refusing To Grant The Parties' Joint Motion To Dismiss Portions of the Consent Decree?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
INDEX OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
ARGUMENT	
I. Petitioners' Claims Are Neither Hypothetical Nor Premature	2
II. Petitioners Do Not Contend That The District Court Was Without Jurisdiction	5
III. Petitioners Do Not Seek To Rewrite The Decree	7
RELIEF SOUGHT	12

INDEX OF AUTHORITIES

Pages

Cases

Pasadena City Board of Education v Spangler, 427 US 424 (1976) 9-11

Rufo v Inmates of Suffolk County Jail, ___ US ___, 112 S Ct 748, 116 L Ed 2d 867 (1992) 8

Statutes

28 USC § 1292(a)(1) 5

STATEMENT OF THE CASE

Petitioners incorporate by reference the statement of the case contained in the petition. This reply brief is necessary because of several inaccuracies in the Respondent's brief in opposition to the petition.

ARGUMENT

I.

Petitioners' Claims Are Neither Hypothetical Nor Premature.

Respondent correctly acknowledges that one aspect of Petitioners' challenge focuses on the ruling that Petitioners must comply with all of the detailed provisions of the State Plan above and beyond complying with the requirements of the Constitution. Respondent erroneously asserts that this concern is hypothetical, however, because "The provisions of the Decree and Plan are confined to remedying constitutional violations." Brief opposing petition, pp 11-12. If that were true, Petitioners would have no basis for their challenge, but the plain fact is that the provisions of the State Plan go

far beyond what is required by the constitution, and the Consent Decree specifically provided that compliance with the constitutional requirements of the Consent Decree did not require full implementation of all the terms of the State Plan (App to Pet 99a-100a):

> Nothing in this Decree shall be interpreted as requiring Defendants to specifically comply with any State law, or any other provision of the State Plan that does not implicate constitutional rights of inmates.

Compliance with the State Plan would be sufficient to demonstrate compliance with the constitution (App to Pet 99a), but contrary to the District Court's orders and Respondent's current assertions, compliance with the State Plan is not necessary for compliance with the constitution.

Respondent also contends that Petitioners' contentions are premature and they say:

> The district court has yet to deny any aspect of the motion on any ground, including any failure by petitioners to comply with the State Plan. In the absence of final disposition of the parties' motion in an order appealable under 28 U.S.C. 1291 or 1292, it is highly doubtful that the court of appeals had jurisdiction of petitioners' appeal at this juncture.

Brief opposing petition, pp 12-13.

This extraordinary statement is inexplicable in light of the District Court's order of March 30, 1993 (App to Pet 21a-22a): "IT IS FURTHER ORDERED that defendants motion to dismiss portions of the consent decree filed April 29, 1992 (dkt. #1679) is DENIED without prejudice."

Because the orders involved injunctions, they were appealable to the Court of Appeals pursuant to 28 USC § 1292(a)(1).

The petition presents issues which are both concrete and timely.

II.

Petitioners Do Not Contend That The District Court Was Without Jurisdiction.

Respondent's statement of the question presented distorts the question presented by the petition. Petitioners do not challenge the District Court's jurisdiction; we challenge the incorrect exercise of the Court's authority and its decision to engage in unilateral judicial factfinding in derogation of the stipulation of the parties. We

reiterate what was said at pp 55-57 of the petition:

> Michigan does not suggest that the District Court is merely a rubber stamp without any authority to make an independent evaluation of the parties' joint motion. Michigan submits that the District Court did not make an independent evaluation of whether provisions of the Consent Decree should be dismissed; to the contrary, the Court's orders ignore the Consent Decree and the requirements of the Constitution and focus exclusively -- and improperly -- on minutiae of the State Plan which are not connected to the constitutionality of conditions in the prisons. Michigan submits that the Court of Appeals erred in balancing the court's authority against the wishes of the parties and the requirements of the Decree, especially in light of this Court's repeated exhortations against undue interference by federal courts in state prison operations and the fact that remedies are strictly limited by CRIPA and the terms of the Consent Decree solely to curing constitutional violations. Williams v Vukovich, 720 F2d 909, 923 (CA 6, 1983), indicates that the court's authority is limited to determining whether the parties' agreement is illegal, a product of collusion or contrary to the public interest; Bell v Wolfish, 441 US 520, 548, 99

S Ct 1861, 60 L Ed 2d 447 (1979), counsels in favor of deference to state officials in the absence of "substantial evidence in the record" of unconstitutional action; and New Hampshire v Maine, 426 US 363, 369, 96 S Ct 2113, 48 L Ed 2d 701 (1976), permits implementation of the parties' agreement when the agreement "reasonably invest[s] imprecise terms with definitions" and there is nothing to suggest that the agreement "is wholly contrary to relevant evidence."

Under any such formulation, the District Court exceeded its authority when it refused to grant the parties' joint motion.

III.

Petitioners Do Not Seek To Rewrite The Decree.

In addition to repeatedly mischaracterizing Petitioners' claims and the nature of the District Court's orders, Respondent also misstates the terms of the Consent Decree. Only two paragraphs after correctly asserting that "the pro-

visions of the Decree and the Plan are confined to remedying constitutional violations" (brief opposing petition, pp 11-12), Respondent incorrectly asserts that the Decree "may in some respects exceed the constitutionally required minimum" (brief opposing petition, p 13). Petitioners readily acknowledge that state officials may agree in a consent decree to do more than that which is minimally required by the Constitution. Rufo v Inmates of Suffolk County Jail, ___ US ___, 112 S Ct 748, 116 L Ed 2d 867 (1992). Contrary to Respondent's current assertions and contrary to the District Court's orders, however, the Consent Decree in the instant case leaves no doubt that Petitioners agreed only to comply with the constitution and not

some higher standard. The Decree provides (App to Pet 88a-89a, 99a-100a):

> The provisions of the Decree are intended by the parties to assure the constitutionality of the conditions under which prisoners are incarcerated in the subject prisons. * * * Nothing in this Decree shall be interpreted as requiring Defendants to specifically comply with any State law, or any other provision of the State Plan that does not implicate constitutional rights of inmates.

Respondent attempts to distinguish Pasadena City Board of Education v Spangler, 427 US 424 (1976), on the grounds that the parties to the instant case, supposedly unlike the parties in Spangler, "never contended that all objectives of the decree had been accomplished" and that this Court did not grant relief in Spangler. (Brief opposing petition, p 11, n. 2).

Respondent is simply wrong on both of these points. In Spangler the petitioner sought four types of relief, one of which was discussed--and granted--by this Court. There was apparently agreement of the parties that one objective of the remedial plan had been achieved but there was dispute as to other points. 427 US at 436 ("There has been, for example, dispute as to the petitioners' compliance. . . ."). In the instant case the parties' stipulation did not reach every aspect of the Consent Decree, but there is no doubt concerning the parties' agreement with respect to the areas covered by the stipulation, App to Pet 62a-63a:

> The parties now agree and stipulate that Defendants are in substantial compliance with the Consent Decree and have achieved the goal of the Decree by assuring at least constitutional conditions with respect to:

> medical care; fire safety; sanitation, safety and hygiene; crowding and protection from harm; and access to courts and legal mail.

Contrary to Respondent's assertion that the petitioners in Spangler did not obtain relief, this Court said, 427 US at 440: "Instead, we think petitioners were entitled on this phase of the case to a judgment of the Court of Appeals reversing the District Court with respect to its treatment of that portion of the order." That is all the instant Petitioners seek.

RELIEF SOUGHT

WHEREFORE, this Court should grant certiorari to review the decision of the Court of Appeals for the Sixth Circuit and rule that the District Court exceeded its authority in refusing to grant the parties' joint motion to dismiss portions of the Consent Decree where the parties stipulated that there had been substantial compliance and that the goal of assuring at least constitutional conditions had been achieved.

Respectfully submitted,

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